85-1595

No._____

Supreme Court, U.S.
FILED
MAR 28 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1985

GEORGE L. KARAPINKA,

Petitioner

vs.

UNION CARBIDE CORPORATION,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

GEORGE L. KARAPINKA
Petitioner pro se
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68 pp

QUESTIONS PRESENTED

I. Whether the Court of Appeals denied properly the motion to vacate it's order dismissing the appeal, the order issued on the basis of undisputed fraud perpetrated on that Court.

II. Whether petition for certiorari should be granted because of undisputed fraud perpetrated by Union Carbide upon the Supreme Court of the United States.

III. Whether the Court of Appeals' orders should include some ground for the ruling beyond "motion granted" or "motion denied".

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¶203.11 18

Petitioner pro se prays that a writ of certiorari issue to review the questions presented above.

CITATIONS TO OPINIONS BELOW

The United States Court of Appeals for the Second Circuit denied Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon that Court by Union Carbide Corporation by it's Order of December 31, 1985, a copy of which is anexed hereto as a-1*.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS

Statutes

28 U.S.C. Sec. 1254(1): By writ of certi-

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* Appendix - page, below

orari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Sec. 1338(a): The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights, and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

28 U.S.C. Sec. 2201: In a case of actual contraversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. Sec. 2202: Further necessary or proper relief based on a declaratory judgmant or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

35 U.S.C. Sec. 261: Subject to the provisions of this title, patents shall have the attributes of personal property.

Applications for patents, patents, or any intrest therein, shall be assignable in law by an instrument in writting. The applicant, patentee, or his assigns or legal representatives may in like manner grant and

convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States.

A certificate of acknowledgment under the hand and official seal of a person authorized to administer oath within the United States or, in a foreign country, of a diplomatic or consular officer of the United States or an officer authorized to administer oath whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or a application for patent.

An assignment, grant or conveyance shall be void as against any subsequent purchaser or morgagee for valuable consideration without notice, unless it is recorded in the Patent Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

STATEMENT OF THE CASE

The Complaint (A-4)*, invoking the jurisdiction of the District Court on the basis of 28 U.S.C. Sec. 1338(a), 2201, 2202, and 35 U.S.C. Sec. 261, and which Complaint charged Union Carbide with illegally obtaining the Assignments (A-8,10) to my U.S. Patents No. 3,709,853 and No. 3,756,998 had been filed December 19, 1983 in the U.S. District Court for the Northern District of New York; the District Court was asked to declare the patent Assignments of the above Patents (A-8,10) to be null and void. The Complaint also charged that the U.S. Patents listed in Paragraph 7 (A-5) of the Complaint are invalid. The Complaint was dismissed (A-48) for failure to state the claim, with leave to file an amended complaint in 30 days. Motion for Reconsideration was denied April 13, 1984 (A-81). In my Memorandum in support

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* Appendix-page. Ten copies of this Appendix were filed in the Court of Appeals 12/17/84.

of that Motion (filed April 2, 1984), which had been served upon Union Carbide on March 28, 1984, on pages 4-5 (A-52,53) I gave a very detailed and definite statement about my unpatented by me inventions and seven Union Carbide"s Patents containing them with my letter to Union Carbide of April 18, 1978 (A-56) describing these inventions, attached to that Memorandum. See a-26 below. I was not permitted by the District Court to present any of my argument in support of that Motion.

The Amended Complaint, invoking the jurisdiction of the District Court under 28 U.S.C. Sec. 1338(a), 2201, 2202, and under 35 U.S.C. Sec. 261, was filed April 13, 1984. It charged Union Carbide with obtaining the Assignments (A-74, A-76) of my U.S. Patent Appli- No. 138,611 and No. 767,508 which have resulted in U.S. Patents No. 3,709,853 and No. 3, 756,998 respectively, contrary to the decision of the Supreme Court in United States v. Dubilier Condenser Corp. 1932, 289 U.S. 178,

186-9. I pray in my Amended Complaint the District Court to declare the Assignments of these Patents, which have been recorded in the U.S. Patent Office in accordance with 35 U.S.C. Sec. 261, to be null and void and to declare the titles to these Patents to be mine and to order Union Carbide to transfer to me all the revenue and royalties derived from licensing the inventions of these Patents. I am also asking the District Court to declare U.S. Patents in Paragraph 11 of the Amended Complaint (A-72), which have been issued to Union Carbide, to be invalid because they disclose and/or claim my inventions which are unpatented by me without listing me as an inventor or a coinventor. Amended Complaint was dismissed July 10, 1984 for failure to state the claim. See a-4 and Exhibit A of Union Carbide's motion for dismissal of my appeal which is being requested from the Clerk of the Court of Appeals in accordance with Rule 19.1 of the Rules of this

Court. The motion that resulted in that Order was argued on May 25, 1984 in the District Court. On questioning by the District Court I gave a complete explanation of my unpatented inventions and of the seven Union Carbide's Patents listed in Paragraph 11 of the Amended Complaint. See a-15 to 17 (A-114, 115). Motion for reconsideration was denied August 13, 1984. In both if these Motions I was not permitted to make my arguments. Notice of Appeal (A-157) was delivered to the Clerk of the District Court on August 23, 1984 and thus it was filed on that date. See a-21,22; Affidavit Items 2 and 3. The Clerk stamped this Notice of Appeal "Filed" on August 28, 1984.

July 30, 1984 Union Carbide filed its motion to dismiss my Amended Complaint that had already been dismissed by the District Court in its Order of July 10, 1984. See a-11. More definite statement requested needlesly by Union Carbide was supplied by me in

A-56,57 and by the transcript of May 25, 1984 proceedings which Union Carbide ordered from the reporter and obtained it on or about June 11, 1984. See a-20 (A-117). This transcript was ordered by me August 27, 1984, see a-23; it was filed in the Court of Appeals with the supplementary record on January 11, 1985 after the Court of Appeals dismissed my appeal and had issued its Mandate on January 3, 1985. The redundant District Court's Order of August 28, 1984 (Exhibit D of Union Carbide's motion for dismissal of my appeal) and the judgment of September 21, 1984 were filed after the Notice of Appeal had been delivered to the Clerk of the District Court on August 23, 1984 and therefore these documents were issued outside of District Court's jurisdiction. See a-4 and a-21, 22.

The copies of the Notice of Appeal and of the District Court's Docket Entries were fi-

led by the Clerk of the Court of Appeals on November 5, 1984, that is 74 days after the filing of the Notice of Appeal, after I had filed on October 26, 1984 my motion in the District Court asking that Court to direct the Clerk of that Court to transmit those documents to the Court of Appeals.

November 30, 1984 Union Carbide filed its motion to dismiss my appeal on the basis of Rule 54(b) of F.R.C.P. Union Carbide stated there fraudulantly that the District Court's Order of July 10, 1984 appealed from was interlocutory and that the redundant Order of August 28, 1984 issurd five days after the District Court's Clerk had received the Notice of Appeal, which therefore the District Court did not have any jurisdiction to issue, was the final Order.

After my letter to the Clerk of the Court of Appeals of November 19, 1984 requesting that Clerk to obtain the transcripts of the District Court's proceedings of May 25, 1984

and of August 3, 1984 in accordance with Rule 11(b) of F.R.A.P. had been totally ignored by that Clerk, I mailed on December 20, 1984 to that Clerk my Motion for the Direction of the Clerk of the Court of Appeals to obtain and to file these transcripts which contained essential evidence against Union Carbide's motion for dismissal of my appeal. See a-23, Affidavit Items 6,7. This Motion was never filed nor returned to me. See Court of Appeals' Docket Entries.

January 8, 1985, after the Mandate had been issued on January 3, 1985, I received in the mail the copy of the Court of Appeals Order of dismissal of my appeal of December 24, 1984. See a-23, Affidavit Item 8. My Motion for Rehearing was mailed to the Clerk of the Court of Appeals on January 9, 1985; it was filed January 15, 1985, that is 12 days after the issuance of the Mandate. This Motion was dismissed, without stating any reason, by the Order of the Clerk of

the Court of Appeals on March 20, 1985.

My examination of the entire record in No. 84-7916, of all the original papers, in the Court of Appeals on April 22, 1985 and more specifically on July 10, 1985showed that Union Carbide did not file its Notice of Appearence. See a-22,23; Affidavt Items 4,5. So far Union Carbide did not supply the Court of Appeals with a proof or a sworn statement that its Notice of Appearence was mailed by depositing it into the U.S. Mail or otherwise delivered to the Court of Appeals.

Petition for a Writ of Certiorari No. 84-1482 was doketed in this Court on March 21, 1985. Three copies of Union Carbide's Brief in Opposition, containing fraudulant statements, were served upon me on May 21, 1985; that Petition was denied August 14, 1985.

July 10, 1985 I filed in the Court of Appeals my timely Motion for Recall of Mandate and for Leave to File a Motion for Rehea-

ring, motion based on the above enumerated violations of due process of law by the Court of Appeals. This Motion was denied by the Order of August 21, 1985. Petition for a Writ of Certiorari based on that Order was filed in this Court as No. 85-837; it was denied January 13, 1986.

Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon the Court of Appeals, based on the facts that Union Carbide had stated fraudulantly in its motion to dismiss my appeal that the appealed orders were not final, supported by Affidavit (a-21) and with Certificates of Service by Mail were mailed to the Clerk of the Court of Appeals on October 9, 1985. That Motion stamped Received 1985 Oct 15 U.S. Court of Appeals Second Circuit was returned to me with the form letter stating:"Papers are out-of-time leave of court to file is required". That entire Motion with the supporting Affidavit was

sent back to the Court of Appeals with my letter of October 22, 1985 stating that the Clerk did not have any grounds for returning that Motion.

On January 7, 1986 I mailed to the Court of Appeals my Motion to Rule on Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon the Court of Appeals by Union Carbide Corporation. January 13, 1986 I received Court of Appeals Order, stamped filed December 31, 1985, dismissing Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon the Court of Appeals by Union Carbide Corporation (a-1). By my letter of January 14, 1986 I withdrew the mute Motion to Rule. That Motion to Rule, that had been received by the Clerk's Office January 9, 1986, was returned to me by that Office on January 24, 1986.

REASONS FOR GRANTING CERTIORARI

Certiorari should be granted because Court of Appeals for the Second Circuit departed from the accepted and usual course of judicial proceedings in denying the motion for vacating the order which order was obtained on the basis of undesputed, fragrant fraud and in ruling on the motions without reasons for those rulings. Certiorari should also be granted because the respodent, Union Carbide Corporation, perpetrated fraud upon the Supreme Court of the United States.

ARGUMENT

I. COURT OF APPEALS DENIED IMPROPERLY THE MOTION TO VACATE IT'S ORDER DISMISSING THE APPEAL, THE ORDER ISSUED ON THE BASIS OF UNDISPUTED FRAUD PERPETRATED ON THAT COURT

This Court had ruled in Hazel-Atlas Co. v. Hartford Co., (1944) 322 U.S. 238, 246 that any judgment or ruling of the court of appeals obtained on the basis of fraud perpetrated upon that court is invalid. Although the fraud perpetrated by Union Carbi-

de, in this case under consideration, upon the Court of Appeals for the Second Circuit is analogous to that of Hazel-Atlas that Court refused to grant, without any reason, my Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon that Court by Union Carbide Corporation (a-1). The fraud perpetrated by Union Carbide upon Court of Appeals here is of a more serious nature than that perpetrated in Hazel-Atlas where fraud was perpetrated upon the Court of Appeals through a fraudulant article published in the trade literature. Here the fraud upon the Court of Appeals, persuading fraudulantly that Court that the appealable order was interlocutory, was perpetrated by Union Carbide through the tool of the judiciary system - the motion, Motion to Dismiss the Appeal. Certiorari, therefore, should be granted.

The fraud perpetrated by Union Carbide upon the Court of Appeals constituted

purposeful failure to file Notice of Appea-. rence before filing it's Motion to Dismiss the Appeal containing fraudulant statements and fraudulant statements in Union Carbide's response to the Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon the Court of Appeals by Union Carbide Corporation.

The entire record in the Court of Appeals, docket entries and the docket consisting of all the recorded documents in No. 84-7916, shows undisputedly that Union Carbide did not file contrary to Rule 46(d)(1) of the Rules of the Court of Appeals for the Second Circuit it's Notice of Appearence. See a-22, Affidavit Items 4,5. Union Carbide proceeded, then, to perpetrate fraud upon the Court of Appeals by making fraudulant statements in it's Motion:

1. On pages 3-4 of that Motion to Dismiss the Appeal Union Carbide states:

"That Order (ExhibitB), and the Order of July 10 (Exhibit A), are the subject of

> the Notice of Appeal (Exhibit C), which was submitted to the Clerk by letter dated August 21. ... Also on August 28, the Clerk of the District Court filed the Notice of Appeal mentioned above, which is the only Notice of Appeal to be filed in this case."

This statement is fraudulant; it omits the fact that the Notice of Appeal was received by the Clerk on August 23, 1984. See a-21, Affidavit Item 2. This fact was known to Union Carbide from Form C, Second Circuit-Civil Appeal Pre-argument Statement a copy of which had been served upon Union Carbide on September 1, 1984. See a-22, Affidavit Item 3.

According to the principle of the court procedure in the United States, the notice of appeal submitted to the clerk for filing is deemed to be filed on the date it is received by the clerk and not on the date the clerk stamps it "Filed". See Rule 4(a)(1) of Fed. R. App. P. and 9 Moores Federal Practice (2nd Ed.) 203.10 (3-41) which states:

"The notice of appeal is filed with the clerk when it is received into his custody and control."

Therefore, contrary to Union Carbide's fraudulant statement my Notice of Appeal had been filed August 23, 1984. See a-21, Affidavit Item 2.

According to another well established principle of United States jurisprudence:

"The filing of a timely and sufficient notice of appeal has the effect of immediately transferring the jurisdiction from the district court to the court of appeals with respect to any matters involved in the appeal. It divests the district court of authority to proceed further with respect to such matters, except in aid of the appeal,"...
9 Moores Federal Practice (2nd Ed.) ¶203.11

Therefore, the issuance of the District Court's redundant Order of August 28, 1984 (Exhibit D of Union Carbide's Motion), which dismissed the claims of the Amended Complaint which already had been dismissed by the District Court's Order of July 10, 1984 (a-11), was outside of the jurisdiction of the District Court. The Court of Appeals had jurisdiction over this case at

the time the Notice of Appeal was received by the Clerk of the District Court on August 23, 1984. See a-21, Affidavit Items 2, 3. The contention of Union Carbide in its Motion on page 4-5 that the District Court's Order of August 28, 1984, which the District Court had no jurisdiction to issue, had been final was totally fraudulant because Union Carbide had known that the Clerk of the District Court was in the posession of the Notice of Appeal on August 23, 1984. See a-22, Affidavit Item 3.

2. Union Carbide perpetrated fraud upon the Court of Appeals by stating the following on page 6 of it's Motion:

"Union Carbide Corporation therefore respectfully moves this Court to dismiss the appeal and direct plaintiff-appellant to take the proper steps in the district court if he intends to seek review of that court's decision."

This fraudulant statement states that there is an appealable order or judgment on the basis of which I could have filed a proper notice of appeal. Firstly, as shown

above my Notice of Appeal was properly delivered to the Clerk of the District Court on August 23, 1984 and therefore it was filed on that date with the jurisdiction over my case being transferred on that date from the District Court to the Court of Appeals. So the Order of August 28, 1984, which redundently dismissed the Amended Complaint which already had been dismissed by the District Courts Order of July 10, 1984, and the District Court's Judgment of September 21, 1984 were issued by the District Court outside of its jurisdiction and are therefore not appealable.

Secondly, on November 30, 1984, the date on which Union Carbide filed its Motion, Union Carbide had known that no timely notice of appeal from the District Court's Order of August 28, 1984 and from Judgment of September 21, 1984 (if they were appealable) could be filed because the 30 day notice of appeal filing period had long ex-

pired. So the above statement by Union Carbide on page 6 of its Motion is flagrant fraud perpetrated by it upon the Court of Appeals.

3. The contention of Union Carbide that the District Court's Order of July 10, 1984 is not final but interlocutory is totally fraudulant. The District Court clearly states on page 6 of its Order of July 10, 1984 that the claims dealing with the rescision of patent assignments and those dealing with validity of Union Carbide's Patents had been dismissed by that Order. See a-11. There were no other claims in the Amended Complaint.

Union Carbide asked for a more definite statement on Paragraph 11 of the Amended Complaint which reads:

"11. Union Carbide Corporation was and is using and licensing worldwide my unpatented inventions for the production of high and low density polyethylenes. Some, but not all of these unpatented inventions are disclosed and/or claimed in the following U.S. Patents: 3,879,368, No. 3,790,550, No. 3,806,500,,No. 3,844,975, No. 4,015,059,

No. 4,077,904 which were issued to Union Carbide Corporation. I am the sole inventor of the inventions disclosed and claimed in the U.S. Patent No. 3,709,954."

Since all of the Patents cited in the above Paragraph were issued to Union Carbide, Union Carbide had known whose inventions they contained and who the inventors on those Patents were. Therefore that claim was plenty definite to plead responsively since Union Carbide was in posession of my letter to it of April 18, 1978 the copy of which had been served upon it on March 28, 1984 as Exhibit 1 to my Motion for Reconsideration. See a-26. That letter elaborated in detail the issue of the inventorship on the above Patents. Secondly, I supplied all the explanations to the District Court regarding that Paragraph during the questioning by the District Court on May 25, 1984 during which Union Carbide was present. I stated there, and Union Carbide had already known that fact (see a-26), that the inventorship on all of the above

Patents was incorrect and therefore they were all invalid. See a-14 to 17. The District Court dismissed that claim in its Order of July 10, 1984. See a-11.

Union Carbide ordered the transcript of that May 25, 1984 District Court's proceeding which was transcribed in June 1984. See the Court Reporter's Certificate dated June 11, 1984 in a-20. This essential to the denial of Union Carbide's Motion transcript was filed in the supplementary record in the Court of Appeals on January 11, 1985 after the appeal had been dismissed on December 24, 1984 and after the Mandate had been issued on January 3, 1985. See a-23, Item 6. I had ordered that transcript on August 27, 1984. See a-23, Affidavit Item 7.

So at the time of filing of its Motion on November 30, 1984 Union Carbide was in posession of the transcript of May 25, 1984 District Court's proceedings which it

had ordered from the Court Reporter on or before June 11, 1984 and my letter to it of April 18, 1978 (a-26). Union Carbide knew then that unpatented inventions of Paragraph 11 of the Amended Complaint were dealing with validity of the Patents listed there on which the District Court had ruled in the July 10, 1984 Order and that all the claims had been dismissed. Union Carbide's argument and conclusion in its Motion that that Order of July 10 had been interlocutory were totally fraudulant.

Additional fraudulant statements were made by Union Carbide in its response to Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon the Court of Appeals by Union Carbide which response it styled as "Union Carbide's Response to Appellant's Motion to Vacate the Order of December 24" which was appearently filed in the Court of Appeals on or about November 15, 1985.

On page 1 Union Carbide fraudulantly states there:"Because appellant refused to provide appellee with a copy of—or even identify— the resubmitted motion papers, Union Carbide did not receive the present motion until November 8, 1985, when the copy was provided by the Court". The Certificates by Mail of my motion papers and of my Affidavit clearly state that these documents were served by first class mail upon Union Carbide on October 9, 1985. Since Union Carbide had not returned these documents to me as Court of Appeals did, there was nothing to be sent to Union Carbide. Union Carbide never informed me that it did not receive those documents. The returned documents to the Court of Appeals, which documents Union Carbide was in posession of, were clearly identified in my letter of October 22, 1985 to the Clerk of that Court the copy of which was served upon Union Carbide:

"Therefore, I am requesting you to file Appellant's Motion for Vacating the Order of December 24, 1984 Because of Fraud Perpetrated upon this Court by Union Carbide Corporation, Notice of Motion, and the supporting Affidavit of George L. Karapinka which documents were returned with the attached letter from your Office of October 16, 1985 These documents, as they have been received by me, are enclosed for filing with this letter."

Again on pages 1-2 there Union Carbide frudulantly states:

"Appellant continues to argue that this Court should vacate its prior rulings on the grounds that a notice of appearence for Union Carbide Corporation is not listed on the docket sheet maintained by the clerk's office."

This fraudulant statement is contrary to Items 4 and 5 of the Affidavit which has been served upon Union Carbide on October 9, 1985 (a-21).

In "Union Carbide's Response to Appellant's Motion to Vacate the Order of December 24" Union Carbide does not deny its fraudulant acts but argues incoherently that Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 246 is not applicable to my Motion. It invents there false discription

of fraud. Its reliance there on Bulloch v. United States 763 F.2d 1115, 1121 (10th Cir., 1985) is totally irrelavant to my Motion:"Pressuring" the witnesses to testify a certain way, or "misleading" answers to interrogatories which when shown true would not constitute fraud upon the court.

In its Response Union Carbide completely disregarded the statement of the Court in United Business Communications, Inc. v. Racal-Milgo, Inc., 591 F.Supp. 1172, 1187 (D. Kan. 1984) that:"the presentation to the court of things known to be untrue" constitutes fraud upon the court. This statement is very applicable to Union Carbide's presentations to the Court of Appeals discussed above.

As shown above Union Carbide had perpetrated flagrant and undisputed fraud upon the Court of Appeals. On the basis of that fraud the Court of Appeals should have granted my Motion and vacated its Order of

dismissal in accordance with the ruling of this Court in Hazel-Atlas Co., supra. Certiorari, therefore, should be granted.

II. PETITION FOR CERTIORARI SHOULD BE GRANTED BECAUSE OF UNDISPUTED FRAUD PERPETRATED BY UNION CARBIDE UPON THIS COURT

Union Carbide Corporation's Brief in Opposition for Certiorari No. 84-1482 which has been filed in this Court on or about May 23, 1985 contains numerous misrepresentation, fraudulant statements, and ommisions directed at this Court with the pupose to persuade this Court not to grant certiorari on my Petition No. 84-1482. The attention here will center only on Union Carbide's fraudulant statements in that Brief which persuaded this Court that my appeal had been properly dismissed by the Court of Appeals. The Brief in Opposition to Petition for Certiorari, a Supreme Court document, had been used as the tool for perpetration of fraud upon this Court.

On page 6, second paragraph, last sentence of that Brief Union Carbide states:

"The dismissal entered by the appellate court was based entirely on the fact that it lacked jurisdiction to hear the appeal because the Orders appealed from were neither ceritfied nor final."

Firstly, no where on the record does the Court of Appeals state on what basis it has dismissed my appeal; see a-2. Secondly that satement is fraudulant because as stated above under I:

1. Union Carbide had known that the Orders appealed from a-4 and a-13 werre final and that the District Court's Order of August 28, 1984 was issued five days after my Notice of Appeal had been filed on August 23, 1984 (was received into District Court's Clerk's custody and control, see 9 Moores Federal Practice (2nd Ed 203.10 (3-41)) from Form C Second Circuit-Civil Appeal Pre-argument Statement which had been served upon Union Carbide on September 1, 1984. Union Carbide had known

that District Court did not have jurisdiction to issue the Order of August 28, 1984 because the jurisdiction over my case had been transferred to the Court of Appeals on August 23, 1984.

2. Union Carbide had known, as was convicingly shown under I above, that the District Court's Order of August 28, 1984, which the District Court did not have jurisdiction to issue, did not dismiss anything that had not been dismissed by the District Court's Order of July 10, 1984 which Order was the source of the Notice of Appeal. Union Carbide did not require a more definite statement regarding Paragraph 11 of my Amended Complaint (page 21 above) as shown convincingly by the transcript of the District Court's proceedings of May 25, 1984 and by my letter to Union Carbide of April 18, 1978. See a-15,16 and a-26.

On page 11, last sentence of Union Car-

bide's Brief in Opposition (No. 84-1482) Union Carbide fraudulantly states:

"However, the "essential evidence" that Petitioner claims was unavailable to the lowwer courts was either cumulative, and thus had already been considered, or was irrelevant to the issue presented."

The essential evidence referred to by Union Carbide is the transcript of May 25, 1984 District Court's proceedings, that Union Carbide had ordered from the reporter on or before June 11, 1984 (a-20) but which transcript was never made part of the record on appeal and which transcript exposes Union Carbide's fraud. This transcript shows that Union Carbide knew that the District Court's Order of July 10, 1984 appealed from was not interlocutory but final and that the Order of August 28, 1984 that Union Carbide fraudulantly claims is the final Order was redundant and meaningless and known to Union Carbide to be issued outside of District Court's jurisdiction.

This flagrant fraud perpetrated upon this Court by Union Carbide is the first case of fraud perpetrated upon the Supreme Court of the United States. Certiorari, therefore, should be granted.

III. COURT OF APPEALS' ORDERS SHOULD INCLUDE SOME GROUND FOR THE RULING BEYOND "MOTION GRANTED" OR "MOTION DENIED"

According to the universally accepted court procedure, the court always states the ground or the reason for its ruling. This procedure was violated by the Court of Appeals for the Second Circuit as all of its appended Orders show. See a-1, a-2, and a-3.

It is not known if the Court of Appeals ruling has been made on the merits of the motion or on some unknown to me, a pro se litigant, technicality.

CONCLUSION

For all the foregoing reasons, I the petitioner respectfully request this Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

George L. Karapinka
Petitioner pro se

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE L. KARAPINKA, Plaintiff	COPY
v.	C.A. No. 83-CV-1682
UNION CARBIDE CORPORATION, Defendant	Hon. Roger J. Miner

U.S. DISTRICT COURT
N.D. OF N.Y.

FILED

AUG 15 1984
AT ___ O'CLOCK ___.M.
J.R. SCULLY, Clerk
ALBANY

ORDER

Plaintiff having moved for reconsideration of this Court's ruling of July 10, 1984, and the matter having been fully briefed and having come on for hearing before this Court on August 3, 1984;

IT IS HEREBY ORDERED that the plaintiff's motion for reconsideration is denied.

Dated: Aug 13, 1984

x Roger J. Miner
United States District Judge

APPEARANCES:

GEORGE L. KARAPINKA
Plaintiff, Pro Se

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Albany, New York
Attoeneys for Defendant
BY: CHRISTOPHER MASSARONI, ESQ.

LEYDIG, VOIT, OSANN, MAYER & HOLT, ESQS.,
Attorneys for Defendant
BY: C. FREDERICK LEYDIG, ESQ.

United States versus Dubilier Condenser Corporation.

THE COURT: What are you saying in Paragraph 11, Mr. Karapinka, when you tell us that Union Carbide is using unpatented inventions, then you refer to certain patent numbers?

MR. KARAPINKA: That's right, your Honor

THE COURT: Why do you call them unpatented?

MR. KARAPINKA: well, they are my inventions.

THE COURT: You mean unpatented by you?

MR. KARAPINKA: That's right. I am not on six of those patents in Paragraph 11. I am not included as a co-invrntor.

THE COURT: Union Carbide has these patents, right?

MR. KARAPINKA: Well, they are issued to Union Carbide.

THE COURT: When you say unpatented, you mean —

MR. KARAPINKA: By me.

The COURT: By you?

MR. KARAPINKA: Well, they include my inventions, but the patents do not include my name, therefore, they are not unpatented. By the act of

Congress, those patents are invalid, and one of those patents, Number 3709954, I am the sole inventor of this patent and not a co-inventor. See, this patent was issued in my name and the name of Frederick K. Carroll.

THE COURT: Which one is that?

MR. KARAPIJKA: 3709954.

THE COURT: You and Mr. Carroll are the sole inventors of that patent?

MR. KARAPINKA: That is the way it was issued, but it was false.

THE COURT: You assigned it to Union Carbide, is that it?

MR. KARAPINKA: Just again under the threat of dismissal. The facts contained in the rest of the paragraphs of my amended complaint, I am praying this Court to declare Exhibits A and B of my amended complaint which are created and required by the act of Congress, namely, 35 U.S.C. Section 261, to be null and void

and to declare the titles to the same patents to be mine, because the signing of this assignment was contrary to the decision of the United States Supreme Court in United States versus Dubilier Condenser Corporation.

I am also praying this Court to declare the titles to my unpatented invent tions which are being

used and licensed by Union Carbide Corporation to be mine.

THE COURT: That is sufficient. Decision reserved. An order will issue from chambers. Thank you.

MR. KARAPINKA: Your Honor, my Presented part of my argument concerning the more definite statement —

THE COURT: It is not necessary. Thank you.

MR. LEYDIG: Thank you, your Honor.

- - -

C E R T I F I C A T I O N

I, GEORGE T. McGLOINE, Official Court Reporter for the United States District Court, in and for the Northern District of New York, do certify this to be a true and accurate transcript of the stenographic record of the foregoing taken at the time and place noted in the heading hereof.

/s/ George T. McGloine
GEORGE T. McGLOINE
Official Court Reporter
United States District Court
Northern District of New York

Albany, New york
June 11, 1984

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

GEORGE L. KARAPINKA, Appellant vs. UNION CARBIDE CORPORATION, Appellee	)	No. 84-7916

AFFIDAVIT OF GEORGE L. KARAPINKA

State of West Virginia)
County of Monongalia)

George L. Karapinka of full age being duly sworn upon his oath deposes and says:

1. I make this Affidavit in support of Appellant's Motion for Vacating the Order of December 24, 1984 because of Fraud Perpetrated upon this Court by Union Carbide Corporation.

2. I mailed my Notice of Appeal to the Clerk of U.S. District Court in Albany, N.Y. on August 21, 1984. I was informed in the telephone call from the Clerk's Office of that Court on August 23, 1984 that my Notice of Appeal had been received by that Office on Au-

gust 23, 1984. I was requested in that telephone call to pay my appeal's fee of $70.00. See Exhibit 1 below.

3. The fact that my Notice of Appeal had been in U.S. District Court for the Northern District of New York Clerk's posession on August 23, 1984 was communicated to Union Carbide Corporation via the copy of Form C, Second Circuit - Civil Appeal Pre-argument Statement, which I served upon Union Carbide Corporation September 1, 1984.

4. On April 22, 1985 in my examination of the entire record in 84-7916, of all the original papers in posession of this Court in that case, I did not see there Union Carbide Corporations Notice of Appearence. I had seen there my Notice of Appearence which I had mailed to the Clerk of this Court on December 4, 1984.

5. On July 10, 1985 in my examination of the entire record in No. 84-7916 in this Court, in which examination I was specifically looking for Union Carbide Corporation's

Notice of Appearence, I did not see there Union Carbide Corporation's Notice of Appearence.

6. On December 20, 1984 I served and mailed (first class postage prepaid) to the Clerk of this Court the supporting Affidavit of George L. Karapinka and the Notice of Motion for Direction of the Clerk of the Court of Appeals to obtain and to file the transcripts of the District Court's proceedings of May 25, 1984 and of August 3, 1984.

7. I ordered the transcripts of the District Court's proceedings of May 25, 1984 and of August 3, 1984 for the first time on August 27, 1984.

8, The copy of the Order of this Court of December 24, 1984 was delivered to me by mail on January 8, 1985. I mailed my Motion for Rehearing of the Motion resulting in that Order to the Clerk of this Court on January 9, 1985.

/s/ George L. Karapinka
George L. Karapinka

Sworn and subscribed
before me this 9th day
of October 1985

4-4-95

/s/ Robert E. Weimer

Official Seal
NOTARY PUBLIC
State of West Virginia
ROBERT E. WEIMER

Exhibit 1

George L. Karapinka
3557 Collins Ferry Road,
B-14
Morgantown, West Virginia
26505

August 24, 1984

Mr. J.R. Scully, Clerk
United States District Court
U.S. Courthouse
P.O. Box 950
Albany, New York 12201

RE: George L. Karapinka v. Union Carbide Corporation, Civil Action No. 83-CV-1682

Dear Mr. Scully:

In accordance with the telephone call from your Office on August 23, 1984 I am enclosing the appeal fee of $70.00 and the duplicating fee of $17.50 for the copies of the Docket Entries and of the transcipts of the Court's proceedings in the above captioned case on March 23, 1984 and on April 13, 1984, which copies I have requested in my letter to you of August 21, 1984.

Sincerely yours,

/s/ George L. Karapinka

George L. Karapinka
Plaintiff pro se

EXHIBIT 1

George L. Karapinka
3557 Collins Ferry Road
Morgantown, W.V. 26505

April 18, 1978

Mr. William Joyce
Union Carbide Corporation
270 Park Avenue
New York, New York 10017

Dear Mr. Joyce:

As you requested in our conversation of April 11, 1978, I am sending you pertinent information about my invention, supported bis-cyclopentadienyl chromium compounds as olefin polymerization catalysts, and about the patents emanating directly from this invention that do not bear my name.

Bis-cyclopentadienyl chromium based catalysts, among other catalysts, was disclosed in my letter to Mr. W. Kehm, dated June 23, 1965. Subsequently, Invention Letter No. 65-88 was assigned to this letter.

Beginning in 1967, this invention, under my direction, moved through the pilot plant (both slurry and fluidized bed reactors) and into the production plant at Seadrift in November 1967.

In October 1971, I was dismissed from Union Carbide. For the following five years or so, while I was unemployed and Union Carbide very successfully exploited the catalysts of which I was the sole inventor, several U.S. patents on these catalysts appeared under inventorship other than mine. Specifically, I do not agree with the inventorship of the following patents:

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

KARAPINKA, Appellant
vs.
UNION CARBIDE, Appellee

84-7916
NOTICE OF MOTION for Vacating the Order of December 24, 1984

Brief statement of the relief requested:
For this Court to vacate it's Order of December 24, 1984 because of fraud perpetrated upon this Court by Union Carbide.

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED

DEC 31 1985

Elaine B. Goldsmith, Clerk

TJM ALK
RJC

/s/ Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

/s/ Amalia L. Kearse
Amalia L. Kearse, U.S.C.J.

pro se

/s/ Richard J. Cardamone
Richard J. Cardamone, U.S.C.J.

December 31, 1985
Date

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Karapinka, plaintiff,-appellant v. Union Carbide Corporation, defendant-appellee	84- 7916

Motion for Dismissal of the Appeal

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is granted.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED

DEC. 24 1984

Elaine B. Goldsmith, Clerk

x Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

x Amalva L. Kearse
Amalva L. Kearse, U.S.C.J.

12/24/84 x Richard J. Cardamone
Date Richard J. Cardamone, U.S.C.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

KARAPINKA,
Appellant
vs.
UNION CARBIDE,
Appellee

84-7916

Motion for Recall of Mandate and for Leave to File Motion for Rehearing

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED

AUG 21 1985

Elaine B. Goldsmith, Clerk

/s/ Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

/s/ Amalia L. Kearse
Amalia L. Kearse, U.S.C.J.

Aug. 21, 1985
Date

/s/ Richard J. Cardamone
Richard J. Cardamone, U.S.C.J

(by TJM)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE L. KARAPINKA
Plaintiff

-against-

No. 83-CV-16
1682

UNION CARBIDE CORPORATION,
Defendant

APPEARANCES: OF COUNSEL:

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C. FREDERICK LEYDIG, ESQ
CHARLES H. MOTTIER, ESQ.

ROGER J. MINER, D.J.

ORDER

I

Plaintiff, appearing pro se, commenced this action on December 19, 1983 alleging various causes of action against defendant Union Carbide relating to certain of his in-

ventions and discoveries, some of which had been patented by him. On March 30, 1984, this Court granted defendant's motion to dismiss, Fed. R. Civ. P. 12(b)(6), allowing thirty days in which to replead. On April 13, 1984, the Court denied from the bench plaintiff's motion for reconsideration of the March 30th Order and allowed plaintiff an additional thirty days to replead his complaint. Plaintiff then served and filed an "amended" complaint the same day. That complaint is the subject of the present motion.

II

Plaintiff's repleaded complaint alleges that while employed by defendant as a chemist, but independent from his employment duties, he discovered and patented certain inventions. In 1973, plaintiff apparently assigned one of those patents to defendant Union Carbide. Plaintiff had previously assigned other patents to Union Carbide in 1968 and 1971. The gravamen of plaintiff's

complaint is that these assignments were made "contrary to the decisions of the United States Courts, United States v. Dubilier Condensed (sic) Corp., 1932, 289 U.S. 178 at 186-189," since he was not hired to discover or patent those items. Moreover, plaintiff claims that he signed those assignments under threat of dismissal and did not receive consideration therefor. Finally, plaintiff claims that although he was told by company officials that he had a right to be recalled to work following his discharge in October of 1981, in fact he never was.

Plaintiff seeks a declaration that his assignments to Union Carbide are null and void and that title to those patents properly should vest in him. He also requests that defendant transfer to him "all the revenue and royalties (with appropriate interest), derived from licensing worldwide (his) inventions...."

III

Defendant Union Carbide moves this Court

for an order pursuant to Fed. R. Civ. P. 12 (b)(6) dismissing parts of plaintiff's complaint as well as for an order pursuant to Fed. R. Civ. P. 12(e) requiring plaintiff to provide a more definite statement regarding the remainin claims. Plaintiff moves for an order pursuant to Fed. R. Civ. P. 55 entering a default judgment in his favor. For the reasons set forth below, defendant's motions are granted in their entirety and plaintiff's motion is denied.

A. Default judgment

Plaintiff served and filed the present complaint on April 13, 1984. Defendant moved to dismiss the complaint, Fed. R. Civ. P. 12(b)(6), on May 7, 1984. Relying on Fed. R. Civ. P. 15, plaintiff seeks a default judgment based on defendant's failure to answer or otherwise move within ten days of service of the complaint. Plaintiff's motion must be denied for two reasons: First, plaintiff never requested that the clerk enter defendat's default. Fed. R. Civ. P. 55(a).

Default not having been entered, entry of default judgment is inappropriate. Second, and in any event, defendant's motion to dismiss was timely made. Because the present complaint is not an amended complaint governed by Fed. R. Civ. P. 15's ten day requirement for filing responsive pleading, but rather a repleaded complaint, defendant was entitled to twenty days in which to respond Fed. R. Civ. P. 12. Decause service of the complaint was effected by mail, defendant was entitled to an additional three days. Fed. R. Civ. P. 6. The twenty-third day following service of plaintiff's complaint fell on Sunday, May 6th. Rule 6 directs in such circumstances that filing will be timely if made on the next business day, in this case Monday, May 7th. Since defendant's response on May 7th was timely, plaintiff's application for default judgment must be denied.

B. Motion to dismiss

With respect to plaintiff's claims regarding the assignments of his patents, it is

clear that plaintiff seeks nothing more than rescision of those contracts based on allegations of duress, illegality or lack of consideration. Plaintiff has consistent ly adhered to his claim, despite repeated inquiries from the Court, that fraud on the part of defendant is n ither in issue nor alleged in his complaint. Because plain - tiff's action is founded upon a contract, see United States v. Dubilier Condenser Cor 289 U.S. 178, 187 (1933) (assignment of pa- tent is contractual in nature); Perma Rese- arch & Development Co. v. Singer Co., 402 F. Supp. 881 (S.D.N.Y. 1975), aff'd, 542 F.2d 111 (2d Cir.), cert. denied, 429 U.S. 987 (1976) (same), it is subject to a six-year statute of limitations. N.Y. Civ. Prac. Law 213 (McKinney Supp. 1983-1984). Because the acts of which plaintiff complaints occu- red, and therefore his cause of action acc- rued, no later than January 19, 1973, see Amended Complaint, 6, those claims are ti-

me-barred.

Plaintiff's continued relience on the decision in United States v. Dubilier Condenser Corp., 289 U.S. 178 (1933) is simply misplaced. That decision holds only that while one employed to make an invention in the service of his employer is "bound to assign to his employer any patent obtained," 289 U.S. at 187, one whose employment is "general" is not so required. Id. The decision does not preclude an employee from entering into an independent contract with his employer for the assignment of a patent See id. at 187-88 (a "'corporation which ha: employed a skilled workman, for a stated compensation, to take charge of its works, and to devote his time and services to devising and making improvements in articles there manufactured, is not entitled to a conveyance of patents obtained for inventions made by him while so employed, in the absence of express agreement to that effect

(emphasis added) (quoting Dalzell v. Deuber Watch Case Manufacturing Co., 149 U.S. 315, 320 (1893)).

With respect to that portion of plaintiff's complaint seeking a declaration that defendant's patents are invalid, such claim cannot be maintained since defendant has not accused plaintiff of patent infringement, Walker Process Equipment, Inc. v. FMC Corp. 356 F.2d 449, 451 (7th Cir.) cert. denied, 385 U.S. 824 (1966), and there is therefore no controversy for purpose of declaratory judgment.

c. Motion for a more definite statement

With respect of what remains of plaintiff's repleaded complaint, and that is not at all clear, the Court is constrained to grant defendant's 12(e) motion, and hereby directs plaintiff to provide a more definite statement regarding what appears to be claims against defendant for patent infringement. If, as the Court suspects, the complaint contains no claims other than those

seeking rescissins of the assignments and a declaration of patent invalidity, needless to say the complaint will be subject to dismissal in its entirety with prejudice. Further repleading will not be permitted, plaintiff now having had more than ample opportunity to present any viable claims he may have.

IV

For the forgoing reasons, plaintiff's motion for default judgment is denied. Defendant's to dismiss those claims relating to the assignment of plaintiff's patents and to a declaration of patent invalidity is granted. Similarly, defendant's motion for a more definite statement with respect to any remaining claims also is granted and plaintiff is directed to provide such a statement within thirty days after the date of this Order.

It is so ordered.

Dated: July 10, 1984
Albany, New York

x Roger J. Miner
U.S. DISTRICT JUDGE

3,879,368 "Catalysts Modified with Certain Strong Reducing Agents and Silane Compounds and Use in the Polymerization of Olefins". Strong reducing agents with bis-cyclopentadienyl chromium based catalysts were used by me in the plants in 1967, and earlier in the laboratory. It is also likely that a disclosure of the use of some of thse compounds with bis-cyclopentadienyl chromium catalysts was made in my abandoned U.S. patent application, Ser. No. 708,638 filed February 27, 1968, "Polymerization of Ethylene Using Supported Bis-cyclopentadienyl ChromiumII Catalysts in a Fluidized Bed Reactor".

3,790,550"Fluid Bed Polymerization Process". I am the inventor in the U.S. patent application Ser. No. 708,638, filed February 27, 1968:"Polymerization of Ethylene Using Supported Bis-cyclopentadienyl Chromium II Catalysts in a Fluidized Bed Reactor" (abandoned).

The catalysts claimed in the following patents were made and used by me well before 1971.

3,806,500 "Polymerization with Thermally Aged Catalysts".

3,844,975 "Thermally Aged Hydride Based Polymerization Catalysts".

4,015,059 "Fused Ring Catalysts and Ethylene Polymerization Process Therewith".

4,077,904 "Olefin Polymerization Process and Catalyst Therefore".

I do not agree with the inventorship of F.J. Karol in 3,709,954 "Preparation of Liquid Polymers of Olefins". I have already discussed this issue with Mr. A. Cozzi in August, 1975 and on other occasions.

There may be other patents issued to Union Carbide based on my invention of which I am not aware.

Needless to say, dismissing the inventor and exploiting his work without recognition strikes me as unethical and callous in the extreme. It has caused me enormous personal anguish and financial loss through prolonged unemployment. Most importantly, this action by Union Carbide robbed me of the satisfaction inherent in the making of a real contribution to my field. Clearly the only recognition I received was dismissal.

If I do not hear from you concerning the content of this letter by May 31, 1978, I will consider the entire issue ignored by Union Carbide.

Sincerely yours,

/s/ George L. Karapinka

cc: Mr. W. Anderson
Mr. A. Cozzi